



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

August 7, 2012

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Jason Peri**
Tax Registry No. 935501
Police Service Area 9
Disciplinary Case Nos. 2010-2584, 2010-2645,
2010-2924 & 2011 -4426

CHAN

The above named member of the service appeared before Deputy Commissioner Martin G. Karopkin on October 3, 2011 and was charged with the following:

DISCIPLINARY CASE NO. 2010-2584

1. Said Police Officer Jason Peri, assigned to Police Service Area #9, on or about September 7, 2010, within the confines of the 50th Precinct, in Bronx County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Officer engaged in a verbal and physical altercation with Person A the mother of his child.

P.G. 203-10, Page 1, Paragraph 5

GENERAL REGULATIONS

2. Said Police Officer Jason Peri, assigned to Police Service Area #9, on or about September 8, 2010, having been directed by New York City Police Captain Brandon del Pozo to remain at the 50th Precinct stationhouse, did fail and neglect to comply with said order.

P.G. 203-03, Page 1, Paragraph 2

COMPLIANCE WITH ORDERS

DISCIPLINARY CASE NO. 2010-2645

1. Said Police Officer Jason Peri, assigned to the 25th Precinct, while off-duty, on or about May 16, 2010, within the confines of the State of New Jersey, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Officer engaged in a physical altercation with his Person A causing physical injury to Person A

P.G. 203-10, Page 1, Paragraph 5

GENERAL REGULATIONS

2. Said Police Officer Jason Peri, assigned to the 25th Precinct, while off-duty, on or about May 16, 2010, having been involved in an unusual police occurrence in which said Police Officer was either a participant or a witness failed to promptly notify the Operations Unit, as required.

P.G. 212-32, Page 1,

NOTE – COMMAND OPERATIONS

3. Said Police Officer Jason Peri, assigned to the 25th Precinct, while off-duty, on or about May 16, 2010, within the confines of the State of New Jersey, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: acted in a manner that was injurious to the physical, mental or moral welfare of his child, a minor.

P.G. 203-10, Page 1, Paragraph 5

GENERAL REGULATIONS

DISCIPLINARY CASE NO. 2010-2924

1. Said Police Officer Jason Peri, assigned to Police Service Area #9, on or about September 20, 2010, within the confines of New Jersey, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Officer drove by the residence of Person A violating a restraining order.

P.G. 203-10, Page 1, Paragraph 5

GENERAL REGULATIONS

DISCIPLINARY CASE NO. 2011-4426

1. Said Police Officer Jason Peri, assigned to Police Service Area #9, Viper Unit 8, while off-duty on or about and between April 1, 2011, through April 2, 2011, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Officer violated a valid New Jersey final restraining order, #FV-02-000733-11.

P.G. 203-10, Page 1, Paragraph 5

GENERAL REGULATIONS

2. Said Police Officer Jason Peri, assigned to Police Service Area #9, Viper Unit 8, while off-duty, on or about April 2, 2011, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Officer knowingly damaged a glass window in the residence belonging to Person A

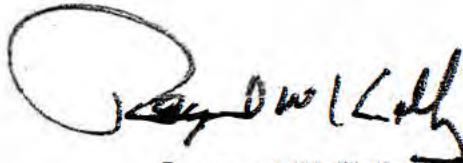
P.G. 203-10, Page 2, Paragraph 5

GENERAL REGULATIONS

In a Memorandum dated March 20, 2012, Deputy Commissioner Martin G. Karopkin found the Respondent NOT GUILTY of Specification No. 1 and GUILTY of Specification No. 2 in Disciplinary Case No. 2010-2584. Regarding Disciplinary Case No. 2010-2645, Respondent was found GUILTY of Specification Nos. 1 and 2 and NOT GUILTY of Specification No. 3. The Respondent was found NOT GUILTY in Specification No. 1, in Disciplinary Case No. 2010-2924, and NOT GUILTY in Specification Nos. 1 and 2 in Disciplinary Case No. 2011-4426.

Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty. Given the circumstances surrounding the misconduct which the Respondent has been found guilty, separation from the Department is warranted. It is therefore directed that the Respondent be offered a post-trial Negotiated penalty of immediate vested-interest retirement, and that he be placed on One-Year Dismissal Probation, forfeit all time previously served while on suspension, waive all time and leave balances, including terminal leave, if any, and retire from the Department while on Modified Assignment.

Such vested-interest retirement shall also include the Respondent's written agreement to not initiate administrative applications or judicial proceedings against the New York City Police Department to seek reinstatement or return to the Department. If the Respondent does not agree to the terms of this vested-interest retirement agreement as noted, this Office is to be notified without delay. This agreement is to be implemented **IMMEDIATELY**.



Raymond W. Kelly
Police Commissioner



POLICE DEPARTMENT

March 20, 2012

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Jason Peri
Tax Registry No. 935501
Police Service Area 9
Disciplinary Case Nos. 2010-2645, 2010-2584,
2010-2924 & 2011 4426

The above-named member of the Department appeared before me on October 3, 4, 5, & 11, 2011, and December 2, 2011, charged with the following:

Disciplinary Case No. 2010-2645

1. Said Police Officer Jason Peri, assigned to the 25th Precinct, while off-duty, on or about May 16, 2010, within the confines of the State of New Jersey, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Officer engaged in a physical altercation with his [REDACTED] Person A [REDACTED] causing physical injury to Person A [REDACTED]

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

2. Said Police Officer Jason Peri, assigned to the 25th Precinct, while off-duty, on or about May 16, 2010, having been involved in an unusual police occurrence in which said Police Officer was either a participant or a witness failed to promptly notify the Operations Unit, as required.

P.G. 212-32, Page 1, NOTE COMMAND OPERATIONS

3. Said Police Officer Jason Peri, assigned to the 25th Precinct, while off-duty, on or about May 16, 2010, within the confines of the State of New Jersey, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: acted in a manner that was injurious to the physical, mental or moral welfare of his child, a minor.

P.G. 203-10, Page 1, Paragraph 5 GENERAL REGULATIONS

COURTESY • PROFESSIONALISM • RESPECT

Disciplinary Case No. 2010-2584

1. Said Police Officer Jason Peri, assigned to Police Service Area #9, on or about September 7, 2010, within the confines of the 50th Precinct, in Bronx County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Officer engaged in a verbal and physical altercation with Person A the mother of his child.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

2. Said Police Officer Jason Peri, assigned to Police Service Area #9, on or about September 8, 2010, having been directed by New York City Police Captain Brandon del Pozo to remain at the 50th Precinct stationhouse, did fail and neglect to comply with said order.

P.G. 203-03, Page 1, Paragraph 2 – COMPLIANCE WITH ORDERS

Disciplinary Case No. 2010-2924

1. Said Police Officer Jason Peri, assigned to Police Service Area #9, on or about September 20, 2010, within the confines of New Jersey, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Officer drove by the residence of Person A violating a restraining order.

P.G. 203-10, Page 1, Paragraph 5 GENERAL REGULATIONS

Disciplinary Case No. 2011-4426

1. Said Police Officer Jason Peri, assigned to Police Service Area #9, Viper Unit 8, while off-duty on or about and between April 1, 2011, through April 2, 2011, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Officer violated a valid New Jersey final restraining order, #FV-02-000733-11.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

2. Said Police Officer Jason Peri, assigned to Police Service Area #9, Viper Unit 8, while off-duty, on or about April 2, 2011, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Officer knowingly damaged a glass window in the residence belonging to Person A

P.G. 203-10, Page 1, Paragraph 5 GENERAL REGULATIONS

The Department was represented by Daniel Maurer, Esq., Department Advocate's Office, and Respondent was represented by Eric Sanders, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

In Disciplinary Case No. 2010-2645 Respondent is found Guilty of Specification Nos. 1 & 2 and Not Guilty of Specification No. 3. In Disciplinary Case No. 2010-2584 Respondent is found Not Guilty of Specification No. 1 and Guilty of Specification No. 2. In the single specification of Disciplinary Case No. 2010-2924 Respondent is found Not Guilty. As to both specifications in Disciplinary Case No. 2011-4426 Respondent is found Not Guilty.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Naom Rosines, Justin Tress, Gregory Powell, Police Officer Steven Cordero, Sergeant Wendie Gomez-Smith, Nicholas Triano, Sergeant Curtis Crystal and Deputy Inspector Brandon del Pozo

Naom Rosines

Rosines is a physician who currently works at Holy Name Hospital in Teaneck, New Jersey. On May 17, 2010, he was working in the emergency room of that hospital.

He identified Person B Person B as a nurse practitioner who worked there as well. Rosines explained that the nurse practitioner "will see and examine the patient you know, come up with appropriate questions are to ask the patient, do a thorough exam and come back to me and repeat all that information as if I was seeing her myself and then we go over what should we do, what's the plan then administer the plan and then she'll come back to me with whatever results and we interpret it together and she will administer treatment as I see fit."

On May 17, 2010, Person A was seen by Person B who then consulted with him. After reviewing Person A medical records for that day [Department's Exhibit (DX) 1], Rosines stated that "[b]ased on Ms. Person A report to us and based on the findings from our examination someone had punched her in the face." He noted that Person B had recorded in the report that Person A had told her that she had been punched several times in the face. Person A had complained of pain in her head, in her jaw and in her ear. He stated that the report noted that Person A had a contusion on her right cheekbone and behind her right ear.

Rosines testified that the report indicated that a CAT scan found that Person A had "a facial fracture, a non displaced maxillary nasal bone fracture." He explained that the maxilla is the cheekbone and that the injury was at the base of the nose. He stated that it was not the nose, which usually gets injured from running into things, but the cheekbone itself that was fractured. He said that because it was non-displaced there was no setting necessary and that bone would re-fuse.

Rosines testified that the injury was consistent with Person A claim that she had been punched. The injuries were also consistent with her claim of pain. He also noted that the

records showed a hematoma or bruise behind the ear which was consistent with her being hit in that location.

On cross-examination, Rosines, who was supervising physician, conceded that he did not recall if he actually visited the patient, Person A. He did not make any notes on the medical records. He agreed that his testimony was based on those records. He conceded that when he relied on the statement attributed to Person A that she had been in a physical fight with someone, he did not know if that was accurate based on his actually having been there to witness it.

He agreed that while Person A injury was consistent with a punch, it was also consistent with anything else hitting her as well. He agreed that Person A did not identify the person who allegedly hit her; indeed, the record reflects that she refused to do so. As to the bruise in the back of her head, Rosines conceded that he did know where the bruise came from and that he relied on what people told him.

On questioning by the Court, Rosines said that there were other things that could have caused the fracture, such as being hit with a baseball bat. He said the injury was not typical of an auto accident victim. On further cross-examination, he agreed that the injury could be caused by walking into something like a doorknob.

Justin Tress

Tress is a patrolman with the Ridgefield Park Police Department (RPPD) in Bergen County, New Jersey. He has about six years of patrol experience with RPPD and has also served as a field training officer. On May 17, 2010, he was working with several officers including Patrolman Dale Madden, who had just come out of field training.

Tress helped Madden with any questions came up and approved police paperwork that Madden filed that night. He and Madden assisted Person A when she came into the RPPD precinct and wanted to apply for a restraining order. She told them that on the night before, May 16, 2010, she had gotten in a physical altercation with Respondent who is, she said, the father of her child, a four- or five-year-old daughter. The first question Tress said he asked her was why she had not come in the night before, when this happened. Person A he said, explained that she had just been released from the hospital.

According to Tress, Person A went on to say that Respondent wanted to come over to Person A house the previous night to see his child and she had agreed, as she would do laundry while Respondent was with the child. Respondent did not show up until 9:00 p.m. and when he did appear, she was angry because it was too late to see the child, who was already asleep. Person A told Respondent that he needed to come back another time. However, Respondent he kept calling her and texting her and so she relented, intending to allow him to see the child briefly. Respondent was with the child for five minutes, at which point a verbal argument started.

Tress believed Person A became upset when Respondent told her that he wanted to discuss their relationship. She recounted that as she and Respondent proceeded towards the door, she asked him leave several times. At some point, she opened the front door and “basically was trying to push him out the door.” Tress stated that Person A told them that Respondent grabbed her by the hair and pulled her into the child’s bedroom and struck her with a closed fist on the right side of her face. She screamed and tried to get a neighbor to call the police and Respondent left the area.

Person A prepared a handwritten statement about the incident (DX 2) and photographs were taken of Person A (DX 3a - 3e, depicting bruises around her ear, upper cheek and arm, and scratches on her chest and arms) at the RPPD precinct. Describing Person A demeanor, Tress said that initially she was indifferent but that as she started explaining what happened, she became visibly upset and teary eyed.

Respondent was arrested but Tress did not know the outcome of the case. Tress agreed that Person A had said that the assault occurred in the daughter's room. Tress did not recall Person A saying anything about the daughter being there but he assumed she was "because she was sleeping" but Tress added he did not know for sure. He agreed that his notes reflected that Person A had said that Respondent had been holding the child while they were in the kitchen area.

On cross-examination, Tress indicated that he had received training regarding domestic violence. He could not recall a domestic violence victim who was untruthful. He agreed that it was possible for a domestic violence victim to be untruthful and he "absolutely" has encountered situations where people have told him things which were not true.

He did not believe that Person A told him how Respondent knew where she lived. He agreed that Person A statement does not mention her inviting Respondent over for a birthday party nor does it mention that the argument ensued after most of the guests had gone.

On questioning by the Court, Tress stated that he was present when the photographs of Person A (DX 3a - 3e) were taken. He identified DX 3a as the picture that best depicted how Person A eye looked. Tress indicated that the copies offered into

evidence by the Department were not as clear as the originals, whereupon, on consent, the original photographs were received in evidence as Court's Exhibit 1.

Gregory Powell

Powell has been an RPPD patrolman since January 2010. On September 21, 2010, he was working the day shift when he responded to Person A home for a complaint of a violation of a temporary restraining order (TRO). Upon arriving at the scene, he encountered Person A who was visibly upset. She was crying and her hair was disheveled. Powell noted that she looked like she had been crying for a while because her eyes were pretty red and she appeared "pretty distraught and disheveled."

Person A explained to Powell that she had recently received a final restraining order (FRO) from the Bergen County Court against Respondent. On the previous day, she was sitting on the front stairs of her home smoking a cigarette when she looked across the street and saw what she believed to be Respondent in a silver vehicle with white and green license plates across the street facing southbound. Due to the sun glare she could not distinctly determine who was in the vehicle, although she described the silhouette of the person to be that of Respondent. She was unable to determine what the car's registration was. When she approached the vehicle, it left the scene.

Powell affirmed that on September 20, 2010, Person A did not know it was Respondent in the car, but her belief that it was him was confirmed when she spoke to her brother, Person C the next day, September 21, 2010, at about 1:00 p.m. Person C had called her and asked why Respondent was driving a vehicle with Florida license plates and asked if Respondent knew someone with such license plates. It was at that point that

[Person A] "connected the events from the previous day." Despite several attempts to contact him by phone and at his residence, Powell never spoke with [Person C]

Powell stated that the license plate [Person A] described, white with green letters, is consistent with a Florida license plate. He said [Person C] described the car as a silver compact with Florida license plates and [Person A] "was able to determine at that time she believed it to be the same vehicle."

[Person A] prepared a handwritten statement on the incident (DX 4). Powell then contacted Superior Court Judge Thurber of the Bergen County Court who confirmed that an FRO had been issued the previous day and she issued a \$1,500 bail on two charges; contempt of the FRO and stalking. Respondent turned himself in on these charges.

On cross-examination, Powell agreed that he was not a witness to the events. No one from RPPD was never able to contact [Person A] brother. He acknowledged that initially [Person A] did not know the car had a Florida license plate. Additionally, he agreed that other states, for instance New Hampshire, have white license plates with green lettering.

Police Officer Steven Cordero

Cordero has been with the Department for about 11 and half years and assigned to the 50 Precinct for the past decade. On September 8, 2010, he responded to a call at [Respondent's address] in the Bronx and spoke to the complainant, [Person A]. She told him that she was having a family dispute with an officer, Respondent, and wanted her daughter back.

Cordero testified that [Person A] "stated to us that he [Respondent] was trying to get back with her and she wanted nothing to do with him...and he got upset with her

regarding that." Cordero stated that Person A told him that Respondent had physical custody of their daughter and he had her upstairs and he did not want to let her go.

Cordero prepared a Domestic Incident Report (DIR) (DX 5) in which Person A wrote a statement detailing that the dispute with Respondent had started early in the morning, approximately 4:00 or 5:00 a.m. Cordero said the only time Person A described a physical altercation was in the report where she claimed that while she reached for the car door to get into her friend's vehicle, Respondent slapped her hand away. Person A signed the report and accurately dated it as being completed on September 8, 2010.

On clarification by the Court, Cordero agreed that Respondent, Person A and the child were all present in the building where Respondent lived, although Respondent was located by other officers in a different apartment from where Person A was.

On cross-examination, Cordero stated that he took the DIR at 8:00 a.m. He agreed that Person A had stated, as noted in the DIR, that she and Respondent had gone out to dinner. Person A did not tell Cordero that they had gone out to dinner at a strip club, nor did she tell Cordero that they had been out for many hours drinking. She did not tell Cordero that the reason Respondent did not allow her to get into the car was because the driver was intoxicated.

Cordero agreed that Person A made it appear that Respondent had kept their daughter without her permission. Cordero was not aware of any law that gave her custody over Respondent. He agreed that she was using the Department to get her daughter back.

Cordero agreed that Person A was present at the same building in which Respondent resides, at 8:00 a.m., several hours after the incident with Respondent. He said that Person A appeared to be alright but he could not recall if it appeared that she had been drinking.

Sergeant Wendy Gomez-Smith

Gomez-Smith, of the Patrol Borough Manhattan North Investigations Unit, was assigned to investigate Respondent. She reviewed Respondent's entire file, as she inherited the case from two previous investigators and was not the case investigator in May 2010. There was no indication that Respondent notified the Operations Unit regarding the incident on May 16, 2010 [when Respondent went to Person A home to see his daughter].

Gomez-Smith contacted the Bergen County courts and obtained a copy of the temporary restraining order, issued on September 11, 2010, (DX 6) and the final restraining order dated September 20, 2010, (DX 7) that had been in effect during the pendency of Respondent's criminal cases in New Jersey. She testified that according to the TRO, it was served on Respondent on September 11, 2010, at 2025 hours by "Sergeant Blake" of this Department. With respect to the FRO, there is a receipt signed by Respondent indicating that he received it on September 20, 2010, at 1425 hours.

On cross-examination, Gomez-Smith agreed that an officer serving papers should complete an affidavit of service. She agreed that she could not find an affidavit of service in this case. She never checked to see if "Sergeant Blake" really exists.

Gomez-Smith also agreed that, on the FRO, it stated that it could not be served on Respondent because he did not appear for the trial date. However, it was noted that the FRO also indicates that Person A was given a copy at 1245 hours on September 20, 2010, and that Respondent was served at 1425 hours on September 20, 2010.

Nicholas Triano

Triano has been a member of RPPD for over six years. On April 2, 2010, he responded to a 911 call for a possible burglary in progress with broken glass at Person A residence. When he got to the scene, Person A was visibly upset, crying, and at first did not offer any information and was not forthcoming with anything. Through investigation and further questioning, she finally admitted that she had a domestic incident with the father of her daughter (Respondent).

Person A eventually revealed that Respondent was outside banging on the window and shattered the glass. Triano testified that he observed a broken window, a front double pane glass window that was broken from the outside in. He said there was debris inside the home. Person A handwrote a statement about the incident (DX 8). Respondent was charged with criminal mischief and contempt of court for violating the final restraining order.¹

On cross-examination, Triano said that he knew the protective order was still in force through a computer check. To his knowledge, the order had not been vacated by the court prior to April 2011. He did not re-verify that with the court. He said it took Person A about 20 minutes to complete the statement and he did not believe she was being untruthful.

Triano agreed that Person A told him that she and Respondent had been together at her home and that she had invited him there. Triano said he was familiar with the history of the relationship between Respondent and Person A

¹ The case was pending at the time Triano testified. Before the conclusion of this trial it was dismissed due to lack of cooperation by Person A

Sergeant Curtis Crystal

Crystal is a 19-year member of the Department assigned to the Patrol Borough Manhattan South Investigations Unit. In February 2011, he contacted an assistant district attorney (ADA) in Ridgefield Park, New Jersey, regarding the status of a case involving Respondent. While he did not know what the case was about, he learned that it had been dismissed because of a failure of the complainant to cooperate. He indicated that the ADA opined that the complainant was not believable but the ADA did not give the basis for that statement.

Crystal also confirmed the dismissal of the case with court personnel for the town, who indicated that Respondent's case was classified as "NG" or "code 2," both meaning not guilty. However, the classification did not indicate if this disposition was due to a judge's decision, a trial, or a dismissal. He further stated that "As best I can recall, it was classified as dismissed, but the document itself said not guilty."

On cross-examination, Crystal agreed that he did not obtain a transcript of the case. He agreed that the ADA told him that Person A had attempted to obtain orders of protection in two different jurisdictions. He agreed that one of the problems the ADA had with Person A was that she had dropped the child off with Respondent and had gone out with him, but he did not know if that was before or after she tried to obtain the orders of protection.

Crystal said that the statement in the Investigating Officer's Report he prepared (Respondent's Exhibit A) that Person A "is not a believable witness" was told to him by the ADA, who did not explain the basis for his opinion. He did not ask what happened in court nor did he ask if a transcript was available. Crystal also stated the ADA was not

satisfied with Person A cooperation in the case. He was not sure how the issue of Person A dropping the child off with Respondent's sister came up in the conversation. Crystal's report read, in part:

...On 02/09/2011 Judge F. Terrance Perna dismissed all charges against the Subject Officer. The S/O is not guilty. The judge stated that the C/V has failed to be present at the last 2 court dates. In addition, [the ADA] stated that the C/V dropped the child off with the S/O sister, went out with the S/O, and then attempted to obtain a restraining order from 2 town courts which both denied her request. She is not a believable witness...

Deputy Inspector Brandon del Pozo

del Pozo has been a member of the Department for 14 years. On September 8, 2010, he was a captain serving as the commanding officer of the 50 Precinct when he learned of an off-duty domestic incident, which also involved custody of a child, concerning Respondent and Person A. He dispatched a sergeant to locate Respondent and to instruct him to report to the precinct.

Meanwhile, del Pozo interviewed with Person A (DX 9a and 9b, audio tape and transcript of interview). Person A said that it was Respondent's birthday and the two met the day before and, at some point, they went to a strip club in New Rochelle. Respondent drank a quantity of alcohol, specifically Hennessy and Heinekens. They bickered through out the night and the bickering became a full blown argument. Respondent threatened to murder her and said that a restraining order of protection does not do any good in a case like that. Respondent and Person A proceeded to a location in the 50 Precinct where their child in common was staying with a member of Respondent's family. The

dispute at that point involved custody of the child. According to Person A at that point, there was a verbal dispute with some pushing.

The sergeant dispatched by del Pozo brought Respondent to the 50 Precinct and del Pozo had Respondent wait in the Juvenile Room, away from the public, and assigned a union delegate to sit with him. del Pozo testified, "I said if you need food, or need to use the facilities or anything, that's fine, but I made it clear, I said you are on duty right now, this is an official investigation, and you are not free to leave." At that time, Respondent complied and told del Pozo that it was his birthday and that he was upset that this was occurring on his birthday.

During the interview with Person A the union delegate tried to text del Pozo and signal him. del Pozo said that upon reviewing the transcript and tape of the interview, he noticed that he left the interview room at about 12:55 because the delegate needed to speak to him. The delegate informed him that Respondent had left the Juvenile Room and was last seen exiting the precinct and "disappearing onto Broadway."

Concerned for Respondent's welfare "because he seemed like he was a little bit depressed and he mentioned that it was his birthday," del Pozo activated a Level One Mobilization to do a search for a missing member of service and enlisted the aid of the Aviation Unit and the Emergency Service Unit (ESU).

Respondent was subsequently located at his residence and del Pozo responded there. Noises could be heard in Respondent's apartment over loud music. The Hostage Negotiation Team was summoned to establish a rapport according to Department procedure with somebody who may be barricaded inside of an apartment and ESU was at

the ready to breach the door if it was necessary to gain emergency entry. Numerous police cars were in the street and numerous officers were in the hallway.

After a period of time, Respondent opened the door. According to del Pozo, Respondent was "very, very angry" and said something to the effect that he saw that he was being treated like a "perp." del Pozo also testified that Respondent also used the word "nigger" to describe how they were treating him.

On cross-examination, del Pozo agreed he established a Level One Mobilization. He agreed that he felt that Respondent had an emotional problem. He agreed that Department procedure would be to take such a person to seek medical assistance. He agreed that Respondent was taken back to the precinct, where del Pozo had a direct conversation with Respondent.

Respondent's Case

Respondent testified in his own behalf.

Respondent

Respondent was appointed to the Department on July 1, 2004 and has previously been assigned to the 52, 42, and 25 Precincts. He has known Person A for about ten years, during which time they have had a very tumultuous relationship and have been involved in numerous disputes. Respondent acknowledged that over the course of their relationship he has been placed on modified assignment several times by the Department.

On May 16, 2010, he was in New Jersey because Person A threw a birthday party for their daughter, who was turning five years old. At that time, he and Person A were not in a

relationship but were on speaking terms. He stated that she had informed him that she was "doing" a party for their daughter and she was upset that he had not attended.

Respondent affirmed that Person A had not told him about this party prior to May 16, 2010.

Respondent stated that he learned of the party because his sister had attended. When his sister got home, she showed him pictures from the party. Respondent stated that at that time he had not known about the party so he called Person A. Respondent claimed that Person A was upset because he had not shown up for his daughter's party. He committed himself to go at that time.

Respondent testified that he arrived at Person A residence sometime between 6:00 and 8:00 p.m. He knew Person A address in New Jersey prior to that date because he had visited his daughter there. When he got there, he met with Person A who informed him that everyone had left. He said he offered to clean up her apartment and backyard; she told him that she had to do laundry. Respondent stated that in connection with her doing the laundry, Person A tried to borrow her mother's car and she returned upset after her mother did not lend her the car. Person A blamed Respondent for the problem and said something to the effect that she "want[ed] to kick [his] fucking head off."

Respondent said that this occurred in front of the child who became upset and started crying. He asked Person A to step outside the house, apparently to get away from the child. They then entered the house and he went to kiss his daughter and put her to bed. He said Person A was there with him. As he did not want to talk in front of the child, proceeded to the kitchen, where they spoke about reconciling their relationship and discussed child support. Respondent stated, "[S]he explained that they shouldn't have been taking so much; it was approximately \$1,400 a month. And she told me that she

never asked for arrears -- she never put in for arrears. And that we were trying to work something out as far as them not taking the arrears out from my check, because she never requested for it."

Respondent said that at some point Person A told him that she was just upset and that she preferred that one of her male friends had attended the party as opposed to him because that person was more of a father to her daughter. She then requested that he leave. Respondent said that he attempted to do so, "[a]nd in the process of me leaving, she kind of lunged -- lunged at me and tried to kind of like eye gouge me." He said this took place in their daughter's bedroom.

In response, Respondent stated that he grabbed her and pushed her off him and he attempted to exit the apartment. He said that he grabbed Person A to restrain her and he pushed her to the side and walked toward her room which was at the front of the apartment. He said that Person A ran in front of him and locked the door to prevent him from leaving the apartment. He said she was screaming for help.

Respondent believed that a neighbor came down the stairs. When asked the gender of this person he said it was "a male and a female, if I'm not mistaken." He did not speak with either the male or the female neighbor.

After this, he left and called his cousin to pick him up from the area so he could go back home. His cousin had driven him to Person A home from his residence in the Bronx. On the way back, Person A mother and brother called him to find out what had happened.

About four days later, Respondent learned from his union delegate that the RPPD was looking for him. There was a warrant for his arrest and he surrendered himself. He

stated that he was subsequently found not guilty and Person A did not show up in court. He appeared in court two or three times before the case was dismissed.

With regard to September 7, 2010, Respondent agreed that he met with Person A to celebrate his birthday, which is on September 8. He and Person A arranged to do "something family oriented" on September 7. Person A called him and she came to his residence in the Bronx. The two of them and their daughter spent the afternoon together and then he and Person A went out in the evening, along with two of his friends, to a strip club. They stayed out until about 3:30 a.m., going to a diner in the Bronx after leaving the strip club.

Respondent and Person A then went back to his apartment. At that point, they had an argument which, he believed, had actually started at the diner. He said that she wanted to wake up their daughter, who was staying with his sister, and take her back to New Jersey. The time was somewhere around 5:30 or 6:00 a.m. Respondent also objected to Person A plan to return to New Jersey by having his friend, who had been out drinking with them, drive her. Respondent said he was concerned about the drinking and also about the fact that his friend did not have a child car seat. However, even after he raised these objections, she still wanted to drive with the friend.

Respondent testified that Person A went to his sister's apartment and got the child. He told his friend to go home and that he would get a cab for Person A. He said Person A refused to get into the cab when it arrived and she started screaming at the cab driver, telling him to call the cops because he, Respondent, was going to kill her. He said that the police were not called at that time.

Respondent said they asked the daughter what she wanted to do and the child said she wanted to go back to Respondent's sister's apartment. He said he carried the child as

they all headed back there. As they approached the building, Person A stormed off. At some point after that, a sergeant from the 50 Precinct came to the apartment. The sergeant instructed him that he needed to go the precinct, which was within walking distance of his apartment, with his daughter. He was told to put the child in the police car, which he refused to do, as he did not want to startle the child so he started walking with the child. About half way there the sergeant pulled up and ordered both to get in the vehicle. Respondent complied.

When they arrived at the 50 Precinct, Respondent stated that they were placed in the Juvenile Room. Sometime later, several officers and the sergeant came to him and told him that he had to give the daughter to Person A. No legal reason was given. Respondent surrendered his daughter to them and the child was taken to her mother. Respondent said that he had been in the Juvenile Room for a while. He did not know why he was there and he felt that when he gave over the child that was the end of it.

Respondent said that several officers came and asked if he had had an argument with Person A. He felt that she was alleging that he had threatened her, which he had not done. Respondent testified, "And they just told me to standby in the office." He was in the precinct for about 45 minutes to an hour and that no one else from the Department came to speak to him. He left at that point, explaining, "I decided to leave because nobody was letting me know what was going on -- what was the reason I was being held at the precinct." Respondent stated that his ID card was still being held at the precinct.

Respondent denied that a captain or a sergeant spoke to him. When he left the precinct, he went back to his sister's residence. Respondent stated that the only bridge he knows of near the precinct is 13 blocks away.

An hour or so after he returned home, ESU came to his door. Respondent said that he had music on really loud in his sister's residence as it was his birthday and he was just listening to music. He was in that apartment with his sister and her four-year old daughter. Respondent said he answered the door as he was just about to go back to the precinct to give his daughter her book bag. When he opened the door, he saw several ESU members with riot shields. He , immediately raised his hands in the air to show that he had nothing to hide. They searched the book bag and then asked if they could come into the apartment. Respondent testified, "I said, please don't treat me like a perp. Don't treat me like a perp. I said, for crying out loud, I'm a veteran as well."

He was told that they were not treating him "like a perp" and that he should relax. He was informed that he was not free to leave the precinct and that he had to return. Respondent said he did not know why ESU was there and noted that he was not armed at the time. He did not have his firearm because he was on modified assignment at the time.

Officers escorted Respondent back to the 50 Precinct Juvenile Room and two officers stood guard. Respondent was not taken to a hospital, nor was he designated as an emotionally disturbed person (EDP). Respondent complained that it was hot in the Juvenile Room where he was kept alone, with the door closed. Respondent said he was at the precinct for seven to eight hours.

Respondent believed he spoke to a captain when he was returned to the precinct. An officer told Respondent that he was there because Person A had complained that he had threatened her. Respondent stated that he was not arrested but was ordered to report to the Medical Division. He was not asked if he wished to file a DIR. After he left the Medical Division, he went back home.

Respondent acknowledged that he was in New Jersey on September 20, 2010, for a court appearance in Bergen County. He believed this involved an order of protection. He does not own a black or a silver car, nor does he own any vehicles with Florida license plates. Respondent denied driving past Person A home in a vehicle with Florida license plates.

Respondent acknowledged that he was contacted by the RPPD in connection with an allegation that he drove past Person A house. They informed him that they had a warrant for his arrest and that he needed to turn himself in, which he did. He appeared in court on those charges two or three times. He said it was disposed of as Not Guilty/Dismissed. Person A had not participated in the court proceedings.

Respondent agreed that there was an order of protection against him and in favor of Person A in effect on April 2, 2011. He denied going to Person A residence on that day and also denied breaking her window. Subsequently, he was contacted by the RPPD, who told him that they had a warrant for his arrest. He turned himself in. He made about two court appearances, Person A did not appear, and the case was dismissed.

On cross-examination, Respondent agreed that on May 16, 2010, he went to New Jersey his daughter's birthday party, though he missed it. He agreed that he had said he had arrived between 6:00 and 8:00 p.m. but acknowledged it could have been 9:00 p.m. He said that Person A wanted him to come, but both Person A and his daughter might have been taking a nap when he arrived; they had not worked out a time for his arrival. Both Respondent's sister and Person A had told him about the party. More specifically, he first learned about the party from his sister, and after seeing the pictures, he called Person A. Respondent conceded that Person A never sent him an invitation and he was a bit hurt by this.

Respondent contended that he knew where Person A was living prior to the birthday party. He claimed she had told him but did not recall when. He agreed that Person A had told him she was going to "kick his fucking head off" outside the residence, in front of their daughter, who appeared to be nervous because of what Person A had said. He said he then put the daughter in bed. Respondent and Person A also discussed child support, a subject that he raised. He said that he was not upset but did note that, with arrears, it was more than what would normally be taken out of his pay.

Respondent agreed that Person A told him to leave and he tried to leave. It was at that point that she lunged at him and tried to gouge his eyes out. He acknowledged that Person A asked him to leave, then prevented him from leaving, and then started screaming for help. Respondent denied punching Person A in the face, stating that all he did was restrain her and push her off of him. He said he did this by grabbing the side of her arms. He denied grabbing her by the hair. He did not recall Person A head striking anything and could not explain how she got a fracture to her face.

Respondent agreed that Person A mother and brother called him after the incident. Person A relatives were upset that Respondent and Person A had an argument. He said the conversations with Person A relatives were "very brief" and he believed he hung up the phone on both Person A mother and brother. Respondent agreed that he and Person A had many verbal arguments over the course of their relationship. He asserted that her mother and brother had called him in the past about their arguments. He denied that they called this time to find out why he had hit her in the face. He said they were upset about the verbal argument.

As a result of this incident, Respondent was arrested. He agreed that he testified that he was found not guilty but also agreed that the case was dismissed. There was no trial before a judge or jury; the case was dismissed because Person A failed to appear.

With regard to September 7, 2010, Respondent agreed that he and Person A went out on a family outing for his birthday, followed by a visit to a strip club and then to a diner. They had an argument at the diner, though he did not recall what the argument was about. He did not recall if during the argument Person A had said that she would get a restraining order. He denied telling her that a piece of paper "doesn't do shit," that he would murder her, or that dead people cannot speak.

Respondent agreed that after leaving the diner, they went to his sister's apartment where their daughter was. Both he and Person A went to his sister's apartment to get the child. Respondent said he was the first one to call a cab. A cab arrived and he knew the cab driver because he often used the service. He agreed that his knowing the cab driver could have been the reason Person A refused to get in.

Person A called a different cab. Respondent denied slapping her hand when she attempted to get in the second cab. He also denied grabbing the child out of her hands at that point and bringing the child back upstairs. Instead, he said, Person A told the cab driver, "somebody call the cops, he is going to kill me. He is going to kill me." Nobody called the police. The cab driver was looking at Person A and did not know what she was talking about because Respondent was not threatening her in any manner.

Then, according to Respondent, Person A asked their daughter what she wanted to do and the child wanted to return to Respondent's sister's house. So, Person A then gave the child to him and he escorted the child to his sister's apartment, followed by Person A

At some point, officers appeared at Respondent's residence, had him surrendered his ID card, and ordered him to go to the 50 Precinct; he did not know why and he was never told he was under investigation. He recalled being asked by officers if he had threatened Person A. He said he thought that once he surrendered his daughter that was the end of it. He denied that del Pozo or anyone told him he could not leave. He was at the 50 Precinct for about 45 minutes or an hour before he decided to leave. He said he went home, which was about five minutes away. He was at his residence for over an hour, gathering up his daughter's things to take to the precinct, when ESU came to the door.

Respondent agreed that on September 20, 2010, he was supposed to appear for a hearing, scheduled for 8:00 or 9:00 a.m., concerning the temporary restraining order that had been issued. He did not appear when he was supposed to and arrived later in the afternoon. He denied that he was late for court because he was in front of Person A home. He said he was late because of a family emergency in which he had visited his father in Boston.

Respondent agreed that he had been aware on April 1, 2011, that there had been a final restraining order issued on September 20, 2010. He knew that he had been arrested and that the case had been dismissed because Person A did not appear. Respondent denied meeting to talk with Person A on April 1, 2011. He denied going to a pub or bar with Person A to look for her godfather, nor did he ever having a drink with Person A at that bar. Regarding Person A written statement to the RPPD about the alleged events of April 1 and 2, 2011, Respondent agreed that it was his position that none of the events claimed in the statement occurred and that Person A had made it all up.

On questioning by the Court, Respondent agreed that he appeared before this Court in September 2009 on a disciplinary case involving charges brought by Person A. That case had arisen out of a fight that had occurred in his apartment, in 2006. Person A had tried to destroy his CD collection and there was a struggle during which she took a lamp and hit him with it. That case also involved his daughter, who was then three years old. Both he and Person A were arrested and he was suspended and then placed on modified assignment in connection with that case.

With regard to going to the birthday party in 2010, Respondent stated that he and Person A had reconciled and had tried to make things work for the sake of their child.

FINDINGS AND ANALYSIS

Overview

The instant charges encompass four different disciplinary cases. All of these matters occurred off-duty and stem from the tumultuous relationship between Respondent and Person A who is the mother of his child.

The three specifications in Disciplinary Case No. 2010-2645 relate to an event that allegedly occurred on May 16, 2010, in New Jersey, where Person A was residing. At that time, Respondent is alleged to have engaged in a physical altercation with Person A.

The two specification in Disciplinary Case No. 2010-2584 deal with two separate incidents which allegedly occurred in the Bronx on September 7, 2010, one involving another verbal and physical altercation with Person A and a second incident involving his failure to comply with the directions of a police captain at the 50 Precinct.

The single specification in Disciplinary Case No. 2010-2924 deals with an incident that allegedly occurred in New Jersey on September 20, 2010. The claim is that Respondent drove past Person A home in violation of a restraining order.

Lastly, the two specifications in Disciplinary Case No. 2011-4426 deal with an incident that allegedly occurred in New Jersey on or about and between April 1, 2011, and April 2, 2011. It is alleged under Specification No. 2 in that case that Respondent broke a window in Person A home and under Specification No. 1 of that case that, by breaking the window, he again violated a restraining order.

As can be seen, Person A is the complainant and main witness regarding most of the specifications. Person A did not testify in this trial.

Disciplinary Case No. 2010-2645

As noted above, on May 16, 2010, Respondent is alleged to have assaulted Person A at her home in New Jersey. Respondent admits to being present but denied any assault. There are two accounts of the incident that occurred this day; the hearsay account given by Person A and Respondent's testimony about the incident. These accounts are remarkable both for their similarities and differences.

Both agree that this day was their daughter's fifth birthday and that Person A had a party for her. Respondent testified that his sister had been invited to the party at Person A New Jersey home. He claimed that his sister informed him about the party when she got home to the Bronx and showed him pictures. Respondent testified that he called Person A and Person A was upset at him for not attending the party. He said he would try to get there.

Respondent stated that he arrived sometime between 6:00 and 8:00 p.m., after the party was over and everyone had left.

Person A in her written statement (DX 2), said that on May 16, 2010, Respondent called her because he wanted to see his daughter after he missed the birthday party. She agreed that he could spend some time with the child while she washed clothes. According to her, he arrived at 9:00 p.m.

Thus, both Person A and Respondent agree that he called her and that he arrived after the birthday party was over. There is an interesting sidelight in the two versions. Person A stated that she had moved to New Jersey to get away from Respondent and never told Respondent where she had moved to. She surmised that he used a private investigator to find her and claimed that he had been "sitting" outside her house observing her movements prior to the party. He testified that she had told him where she had moved to and had invited him out to visit with their daughter before the birthday party. In any event, both put Respondent at Person A home after the birthday party and both discussed the fact that Person A planned to do laundry.

Person A said she initially would not let Respondent in and told him the child was sleeping. She finally let him in, she said, because he was calling and texting. She said that he "stood" in the kitchen with the child for about five minutes. She claimed he was talking about "us" and that she told him to leave. According to Person A the physical altercation occurred when she tried to "push him out." In her written statement, she said that she went to open the door and her "hair got caught in his hand and at that moment he pulled me by my hair 3 times bringing me into our daughter's room where he began to pound on my head & right side of my face. He then tried to leave but I ran to the front

door and screamed for the neighbor to call the police. They ran out and tried to stop him when the door opened he ran away.”

Respondent said that Person A wanted to borrow her mother's car to do the laundry but was turned down. As a result, he said, Person A was upset and blamed him for being there late. Respondent claimed Person A said that she wanted to “kick his fucking head off.” He said their daughter was upset by this and that he asked her if they could talk outside the house. While the child remained inside the house, Respondent and Person A went outside.

At this point, Respondent's narrative of what happened gets confusing. He did claim that at some point he was in his daughter's bedroom. He and Person A began having a conversation and he claimed that he moved the conversation to the kitchen to be away from the child. The conversation about the relationship continued and at some point, Respondent agreed, Person A told him to leave. He said that when he attempted to leave, “she kind of lunged at me and tried to kind of like eye gouge me.” He said this took place in his daughter's bedroom.

Respondent testified that in response to her move he grabbed her and pushed her off him. He then attempted to leave and she ran ahead and locked the door to prevent him from leaving. He said she then started “screaming for help, I believe -- something to that extent.” He then said, “I believe her neighbor came down to – came -- came to the door and knocked -- knocked on her door, that's how I -- how I found my opportunity to leave the apartment.” As Respondent testified, the single neighbor morphed into two, “a male and a female, if I'm not mistaken.” He did not speak to them. He then left the location.

So while they disagree as to the details, both Person A and Respondent agree that a physical altercation occurred at or near the door, that Person A called for help, that neighbors responded and that Respondent then left the scene.

All things considered, Respondent's version of events is not very convincing. His claim that Person A invited him to this birthday party fell apart on cross-examination, when he admitted that he had not been invited. His arrival at Person A home well after the party had ended is further evidence that he was not an invitee.

As noted previously, the confusion as to the number and gender of the neighbors who responded to Person A cry for help also casts doubt on the reliability of his testimony about this incident. His testimony that Person A "kind of" tried to gouge his eye out and "kind of" lunged at him makes no sense, either she did these things or she did not. It is the kind of equivocating that occurs when one is not telling the truth.

On the other hand, Person A claim that Respondent hit her in the eye and caused injury is supported by medical evidence. That evidence consisted of testimony from Rosines and the introduction of medical evidence from the Holy Name Medical Center where Person A had been treated after the incident with Respondent. While Rosines was the supervising physician, it is not clear that he ever saw Person A himself; therefore, his testimony is hearsay. Nonetheless, he was able to review the medical records and explain how the injuries were consistent with Person A claims.

For instance, a CAT scan was done which discovered a small non-displaced fracture of the right nasal bone. This injury, Rosines testified, was consistent with Person A claim that Respondent hit her in the right side of her face. Moreover, such an injury is not consistent with Respondent's description of the incident. The medical report also

indicates that Person A had a contusion at the back of the head and right ear. Again, this is consistent with Person A claim about what occurred and inconsistent with Respondent's version of events.

Additional corroboration comes from Tress, who spoke with Person A after she left the hospital. Tress obtained both the verbal and written statements from Person A. He was also present when photographs of Person A were taken, which further document Person A injuries.

Hearsay evidence is admissible in this forum if it is sufficiently relevant and probative and can be the basis for a finding of guilt, People ex rel. Vega v. Smith 66 N.Y. 2d 130, 139 (1985); Matter of Andruszkiewicz v. Doherty, 84 A.D.3d 595 (1st Dept. 2011). There is ample reason to believe that Respondent assaulted Person A causing, among other things, injury to her nasal bone near the eye and to her ear. Respondent is found Guilty of Specification No. 1.

Specification No. 2 alleges that "on or about May 16, 2010, having been involved in an unusual police occurrence in which said Police Officer was either a participant or a witness failed to promptly notify the Operations Unit, as required."

The Patrol Guide requires a member of the service to report an unusual police occurrence whenever and wherever it happens. Even if one were to accept Respondent's version of this incident in which he claimed that Person A "kind of lunged at me and tried to kind of like eye gouge me," he was involved in a reportable police incident which he failed to report. As noted in the previous discussion, this Court does not accept Respondent's version of the events of May 16, 2010. Under Person A version there was an

assault on her by Respondent which he would have been required to report. No matter which version of events one accepts, Respondent had an obligation to report this matter which he did not do. Respondent is found Guilty of Specification No. 2.

Specification No. 3 alleges that Respondent, "on or about May 16, 2010, within the confines of the State of New Jersey, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: acted in a manner that was injurious to the physical, mental or moral welfare of his child, a minor."

The first problem with this specification is that there is absolutely no direct evidence, even direct hearsay evidence, that Respondent's child was present during the assault. What the Department has done is to infer that the child was present from Person A statement. Person A stated that the child had been asleep. She also told the officers that, at some point, Respondent held her in the kitchen for five minutes. She also said that the assault occurred in the child's bedroom. While the child was certainly present in the house at the time of the assault, there is no clear evidence that she was awake and aware of the event.

Although this specification cites only to the Patrol Guide and not to the penal law, the wording of this charge is similar to the wording of the crime of Endangering the Welfare of a Child. Penal Law § 260.10 provides, in pertinent part, that "a person is guilty of endangering the welfare of a child when he knowingly acts in a manner *likely to be injurious* to the physical, mental or moral welfare of a child less than seventeen years old," (emphasis added). In the instant case, the assistant Department advocate has omitted the "likely to be injurious" language, making the level of proof even higher

because as the charge is worded, the Department would actually have to prove that harm occurred.

It is certainly possible, perhaps even likely, that Respondent's child has suffered harm as a result of the persistent and repetitive discord between him and Person A. But there was no evidence presented of actual harm having occurred and certainly no evidence of actual harm actually having occurred to the child specifically as a result of this event.

As noted previously, there is no clear, reliable and direct evidence that the child was present and actually saw Respondent assault Person A. To the extent that Person A statement could be interpreted to indicate that the child was present and aware of the assault, that portion of the statement would constitute uncorroborated hearsay and thus insufficient and insubstantial evidence to establish claim of harm to the child.

For all of the above reasons Respondent is found Not Guilty of Specification No. 3.

Disciplinary Case No. 2010-2584

The two specifications in this case stem from a get-together between Respondent and Person A in the Bronx. This get-together started on September 7, 2010, and went into the morning hours of September 8, 2010. Remarkably, only a few months after the incident of May 16, 2010 Person A came to the Bronx and went out with Respondent for his birthday. Despite their history of verbal and physical disputes, they went to a strip club where alcoholic beverages are consumed. Person A in her statement to del Pozo (DX 9) claimed that Respondent was drinking and she did not, while Respondent testified that she was

drinking and he did not. After leaving the strip club, in the early hours of the morning, they went to a diner in the Bronx, where things broke down.

Specification No. 1 alleges that Respondent, on September 8, 2010, “engaged in a verbal and physical altercation with Person A [REDACTED] the mother of his child.” The events of that morning involve a long and convoluted series of incidents that went on over a period of time. It is not necessary to try to figure out exactly what occurred beyond to determine if this charge has been proven. The evidence presented, as it relates to the specification, comes from Person A [REDACTED] She claimed that at the diner, and possibly after, Respondent repeatedly made statements which indicated to her that he was threatening to kill her. She said that he said that an order of protection would not save her, that dead people cannot speak and that he would do something to her, possibly using the phrase “bash in” her face. She claimed that he directly threatened, at one point, to murder her; at another point, she said she heard reference to a body bag,

Ordinarily, a verbal dispute is not sufficient to justify disciplinary charges as people have verbal disputes all the time. Where there are threats, as alleged here, disciplinary charges are warranted. The problem, again, is one of proof. Person A [REDACTED] various written and spoken statements about this incident are all hearsay. There is no corroboration of any kind of these threats, which Respondent denies making. At least some of these threats appear to have been made in the presence of other people, yet no testimony of any witness was offered, nor was any explanation offered for the failure to call any such witnesses. While hearsay is admissible, standing alone and unsupported it is insufficient and insubstantial evidence to support a finding.

With regard to the "physical" dispute part of this allegation, Person A alleged that as she was trying to open the door to get into a car to get a ride back to New Jersey, Respondent "smacked" her hand away. Respondent does not deny that he did not want her to get into that car. He claimed the driver had had a few drinks and had no car seat for their child. He did not admit "smacking" her hand or otherwise getting physical with her.

Even if one were to accept Person A hearsay statement, there is no reason to find that this is actionable misconduct. Person A did not claim injury or pain. The act, if it did occur, seems to have been nothing more than some minor contact. Moreover, Respondent offered a good explanation for why he might have done this and thus the minor contact, if it occurred, might have been justified.

Again, we have only Person A hearsay statement to support any charge that might be based on this alleged "smacking" of the hand. In this instance, there is clear evidence that a witness might have been present in the person of the driver of that car. He did not testify.

Thus, as to the "physical altercation" portion of this specification, we have unsupported hearsay testimony about an event that might not constitute misconduct if it could be proven. For the above stated reasons, Respondent is found Not Guilty of Specification No. 1.

Specification No. 2 alleges that "having been directed by New York City Police Captain Brandon del Pozo to remain at the 50th Precinct stationhouse, [Respondent] did fail and neglect to comply with said order."

Again, the testimony about the events of September 8, 2010, cover many hours of activity which are irrelevant to the issue raised by this specification. There is no question that, at some point that morning, Person A went to the 50 Precinct stationhouse. It is undisputed that he was directed to go there and that a sergeant had been dispatched to go to Respondent's home, which is in that precinct, and bring him to the stationhouse. Respondent acknowledges that, when he arrived at the precinct, he was placed in a room, which he identified as the Juvenile Room. After a period of time, he decided to leave and did so.

del Pozo testified that, after Respondent arrived at the precinct, he told Respondent that he was on duty, that there was an official investigation underway and that he had to remain there. Respondent denied ever speaking with del Pozo or any other captain, and no one ever told him that he could not leave.

It is always a challenge to determine who is telling the truth in a one on one situation. In doing so, one has to assess the surrounding circumstances. In this case, Respondent, a police officer with some familiarity of police procedure, had to have realized that a police investigation was underway. Yet, Respondent claimed he did not realize that he was under investigation and not free to leave.

This is not credible. Respondent knew he had had some type of dispute with Person A and he knew that she had previously reported him to various law enforcement agencies. He also knew that he was ordered to the precinct. Thus, even without del Pozo or anyone else telling him, he had to have known that he was the subject of a police investigation related to Person A. Moreover, given his police background, he had to have

known that he was not free to leave. Indeed, Respondent acknowledged in his testimony that other officers told him to "stand by."

Further evidence that he knew it was inappropriate for him to leave was the fact that he left his Department ID card, which had been taken from him, at the precinct. The Respondent, as member of this Department, knew or should have known that he had to have his ID card in his possession at all times. If he believed it was appropriate to leave, he would have collected his ID before departing. The fact that he left without his ID belies his claim that he thought that once he gave over the child he was free to leave.

On the other hand, del Pozo's testimony, that he told Respondent he was on duty and that he could not leave, makes sense and is consistent with the circumstances. It is therefore credible. Respondent is found Guilty of Specification No. 2.

Disciplinary Case No. 2010-2924

The single specification in this case addresses an incident in which it is claimed that on September 20, 2010, Person A saw Respondent outside her New Jersey home in a car, thereby violating a restraining order. Person A initially described the vehicle as silver in color, with a white license plate and green letters.

The first problem here is one of proof. Person A told police officers that she was not sure the man in the car was Respondent. She was not sure what state the license plate was from and only knew that it was white with green lettering. The alleged proof of the stalking arose after she spoke to her brother the next day. Person A brother asked her what connection Respondent had with the state of Florida, because he claimed to have seen Respondent in a silver car with Florida license plates. Neither Person A nor her brother

appeared at this trial. Efforts were made by RPPD to contact Person A brother and he apparently refused to cooperate.

Person A handwritten statement (DX 4) is about the best evidence we have about this incident. It reads:

Yesterday afternoon I had just gotten home from finalizing a TRO - making it an FRO. I had been home for about 20 minutes, I went outside to smoke a cigarette and saw a silver car with white plates and green lettering. The person looked directly at me and although I couldn't get a clear view I knew it was [Respondent]. The person then sped off and didn't even stop at the stop sign at the end of the block. Today at about 1 pm my brother was leaving my house and saw him. He called me and asked if [Respondent] knew anyone in FL. I said I didn't know why and he described the same exact car I had seen yesterday with Florida plates. It's a small compact care w/Florida plates, silver. Most likely a rental. Yesterday appx. time I saw him drive by was 1:15 pm.

Certainly, reading this statement, one might draw the conclusion that Respondent indeed had been in a car outside Person A home. The question is whether the statement, constitutes cognizable evidence of that event.

To begin with, the statement is hearsay as Person A did not testify at this proceeding. Indeed, it is not just hearsay but it is, in significant part, double hearsay. This is because the statement attributed to Person A brother is conveyed to us by Person A. The brother's testimony is critical because Person A testimony alone is insufficient to establish that the person she saw was Respondent.

There is no question that hearsay is admissible in this forum but, before it can form the basis for a finding of guilt, there must be some additional evidence to support it.

There is no such evidence here. For instance, there is no evidence that Respondent owned, rented or had access to an automobile with Florida license plates.

There is another issue related to hearsay testimony and that involves the inability of counsel to examine and challenge testimony through cross-examination. Looking at this statement, the questions that need to be asked are palpable. For instance she said that at 1:00 p.m. her brother was leaving her house saw "him" and called her. Did he call her on the phone or speak to her in person? Why did he do that if he just left the house? Did he see the Respondent on September 21, 2010, as the statement seems to imply, or did he see him on September 20, 2010, which was the day Person A claimed to have seen him in this car. It is worth noting that 1:00 p.m. is approximately the time Person A said she saw Respondent in the car on September 20, 2010.

There are other questions that need to be asked: Where did he see Respondent? What was Respondent doing? How did he know it was Respondent; that is, how well was he able to see him?

All of these questions go to the critical issue of whether Person A brother actually saw Respondent and if his observations truly confirmed Person A observations of the day before. Person A failure to appear also denied counsel for Respondent an opportunity to examine what Person A actually saw herself. For instance, in her written statement, while she acknowledges that she did not get a clear view, she "knew" it was Respondent. Yet, Powell testified that she did not know it was Respondent until the conversation she had with her brother the next day when she put the pieces together and called the police.

Further, the statement is reliant on Person A credibility and her failure to appear at this proceeding denies Respondent, through counsel, an opportunity to challenge that credibility.

There is no question that Respondent was in New Jersey that day because he received the final order of protection in the Bergen County Superior Court and testimony certainly raised some suspicion that Respondent was parked outside Person A home, but it falls short of providing anything that could be described as "proof" that it occurred.

Another problem with this specification is the question as to whether Respondent was served with a protective order before the alleged violation of it. There is no question that a temporary restraining order was issued on September 11, 2010, (several days after the incident in the Bronx). That order expired on September 20, 2010. It apparently had been issued ex-parte, that is, Respondent was not present when it was issued, and it had to be served to be effective. The Department has offered evidence that the TRO was served on Respondent later that evening.

The final restraining order was also issued ex-parte because the court papers indicate that Respondent was not present initially. The document reflects that Person A was given a copy of the final order at 12:45 p.m. Person A in her statement, said that after she left court she went home and went out to have a cigarette, which is when she believed she saw Respondent. She placed the time of the incident at about 1:15 p.m.

The FRO indicates that Respondent was served with that document at 2:25 p.m., more than an hour after the incident. Thus, at the time of the alleged incident, at 1:15 p.m., Respondent had not yet been served with the FRO.

There is a question however as to whether the Department has satisfactorily proven that the TRO was actually served on Respondent. Gomez-Smith provided the only evidence on this issue and she testified that she relied on what the copy of the TRO (DX 6) said. At the bottom of the last page of that document there is a box which clearly states: "Defendant must sign this statement." It is followed by an acknowledgement, in the first person, of receipt of the order and an explanation of the fact that even if the plaintiff, Person A in this case, agreed or invited him, contact would still be a violation of the order. The form then calls for the defendant, which in this case is Respondent, to sign. It also calls for the date and time. Respondent's signature does not appear on the TRO. What is written there, instead, is "served to DEF by Sgt Blake #273 NYPD 09/11/10 20:25." This alone would make the service ineffective. Moreover, we do not know how this alleged service was accomplished (was Respondent given a copy, shown a copy which was not given to him or was he simply told about it verbally).

Further, attempting to rely on this document overstretches the bounds of what can be proven through hearsay testimony. Blake did not testify. No explanation was offered for his failure to appear. Gomez-Smith was apparently not present when this alleged service was accomplished. The document she relied on is a copy of unknown provenance. The fact that it was received in evidence does not in and of itself give the document weight or reliability.² It does not constitute substantial evidence that any kind of service was accomplished.

Thus, even if the Department could prove that the man in the car with the Florida license plates was Respondent, they could still not establish that he violated a restraining

² It is worth noting that Gomez-Smith agreed that an officer serving papers should complete an affidavit of service and that she could not find such an affidavit in this instance.

order because there is no cognizable evidence that any restraining order had been properly and effectively served on him at that time.

For these reasons Respondent is found Not Guilty of the single specification in this case.

Disciplinary Case No. 2011-4426

Specification No. 1 alleges that Respondent, "on or about and between April 1, 2011, through April 2, 2011... violated a valid New Jersey final restraining order..." The only evidence we have about these dates is testimony from Triano, who arrived after the fact, and a hearsay statement from Person A. Although the specification provides no information about how Respondent violated the restraining order, representations by the assistant Department advocate indicated that the claim is that Respondent was at Person A home in New Jersey and broke her window.

Actually, Person A written statement suggests a possibly much broader violation of the then-existing New Jersey order of protection. Person A statement indicates that she not only had been speaking to Respondent, but had invited him to get together in New Jersey at some point on or about April 2, 2011.³ Triano testified that there was an order of protection in effect at that time and Respondent acknowledged the same in his testimony. The order appears to have the final order issued on September 20, 2010. Thus, the contact, both verbal and physical, would have also violated the order, even if Person A consented to, or even encouraged, the contact.

Indeed, Person A started her statement by saying, "[Respondent] and I have been speaking. I thought he had changed his ways. We'd gone to the 101 Pub looking for my

³ None of the statements or testimony provides times of occurrence.

godfather and he wasn't there." She made a point of noting that neither of them had a drink there. Her statement seems to indicate that they were driving when they left that location. At some point, according to her statement, and unsurprisingly given their history, they began to quarrel. She suggested that she go to her home and he go back to his home in the Bronx. According to her statement, Respondent asked if he could go into her house to get his bag. Of course, one does not know exactly what that means, but it certainly suggests that she is claiming that he had been staying at his house. Unfortunately, without Person A present to testify, one does not know what she meant.

Next, according to her statement, Person A told Respondent that he could not come into the house and she would bring the bag out. She then reports that he followed her into the house. Her next action, she wrote, was to change and get into bed, apparently with Respondent in the house. At some point, he left and she locked the door. According to the statement, Respondent then "kept calling" and appeared at her window. He began to bang at the window, while yelling for her to open the door. He told her that she should open the door so he wouldn't create a scene and so that he would not have to "fold a nigga out there." Respondent, she said, continued to bang on the window, breaking it. Although she does not say so, apparently, according to her version, Respondent then fled. Respondent, for his part, denies being at Person A home on this date.

The Department has offered additional evidence which apparently it claims, would corroborate Person A version of events. Triano testified that he responded to Person A home on an attempted burglary call. He noted that, at first, Person A would not tell him what happened. Finally, however, she did tell him. Triano testified that Person A was visibly upset and he noted that there was evidence that the window been broken by being hit

from the outside. Triano also testified that he was familiar with the stormy relationship between Person A and Respondent.

The problem with this evidence is that it does not sufficiently, or satisfactorily, corroborate Person A claim that Respondent is the person who broke her window. Cleary, her window was broken. Clearly, she was upset. But these facts do not corroborate Respondent's presence at her home in New Jersey. From the evidence presented, we do not even know at what time of day the window was broken or, for that matter, at what time of day Triano responded to her house. Further, we do not know why he was called to the scene of a burglary rather than one of domestic violence. While it is possible that Respondent broke the window, there are certainly other ways the window could have been broken and, while Person A statement that Respondent broke it could be true, it could also have been fabricated to pin the blame on a convenient target.

Once again, there was the possibility that other witnesses or other evidence might have existed to prove that Respondent was in New Jersey and with Person A Person A indicates in her statement that they went to the 101 Pub, a premises which, if it existed, might have yielded witnesses to the two of them together, a possible violation of the order of protection in and of itself. Then, there is evidence that Respondent was in a car. If indeed, Respondent used a car to get to New Jersey, there might have been E-ZPass records to show that he travelled to and from New Jersey in that period of time.

Corroboration that Respondent, and not someone else, broke the window is needed and absent in this case.

Respondent is found Not Guilty of Specification No. 1 and Specification No. 2, which alleges he broke the window and which relies on the same evidence.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on July 1, 2004. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has been found guilty of engaging in a physical altercation with Person A and causing her injury. He has also been found guilty of failing to report the altercation to the Department and failing to obey a directive from a police captain to remain in the stationhouse.

The Department has recommended that Respondent's employment as a police officer be terminated. This penalty recommendation merits serious consideration. There is no question that Respondent has a tumultuous relationship with Person A. As a direct result of that relationship, Respondent, in his relatively short career with this Department, has been suspended six times and served a total of more than three years on modified assignment. He has also been the subject of two prior sets of disciplinary charges.

The first of those cases, Disciplinary Case No. 8517/06 arose out of an incident between Respondent and Person A that occurred on September 26, 2005, when Respondent was a probationary police officer. That case, along with another, for minor procedural violations, resulted in Respondent losing 24 days served on suspension and an additional 10 vacation days. Additionally, Disciplinary Case No. 84606/08 ended with a finding of not guilty after a Departmental trial. Notwithstanding that acquittal, the underlying facts

acknowledged by Respondent in that case underscored the violent and mutually destructive nature of the relationship between Person A and Respondent.

What is particularly troubling is that, on occasion, Respondent has provided fertile ground for problems with Person A by putting himself in situations where they can arise. No better example of this can be seen than in the conduct of both Respondent and Person A on September 7-8, 2010. Here was an evening where they both went out. Not surprisingly, both tell a different tale of what the evening was about. Respondent said their purpose was to discuss reconciliation; Person A denied that. But whatever the purpose, they did go out together, only a few months after she claimed he had assaulted her and had him arrested. The activity they engaged in was going out to a strip club where there was drinking. She claimed he was drinking and she was not, he claimed she was drinking and he was not. It really does not matter; their relationship combined with drinking was an obvious prescription for disaster.

It is, of course, regrettable that these people cannot figure out a better way to go through life. What is the concern of this Department, as an employer, is that their mutually destructive relationship has prevented the Department from having the services of Respondent as a full-duty police officer for much of his career.

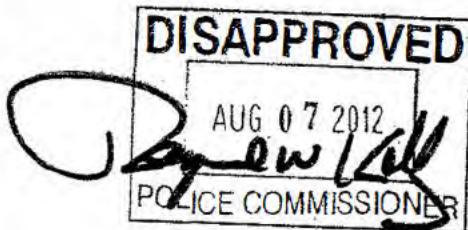
To the extent that Respondent has been the victim of false or un-provable charges, he cannot be punished. In this case, some of the charges have been substantiated. These charges do not, however, seem, based on past Department practice, to be enough to sustain a dismissal from the force. However, a substantial penalty which includes a period of supervision is necessary.

Therefore, this Court recommends that Respondent be DISMISSED from the New York City Police Department, but that his dismissal be held in abeyance for a period of one year, pursuant to Section 14-115 (d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at anytime without further proceedings.

Respondent was suspended without pay for a total of 114 days subsequent to the incidents related to this proceeding. This Court recommends that the Respondent forfeit 90 days previously served on pre-trial suspension without pay and that Respondent be restored the 24 additional pre-trial suspension days that he served.

Respectfully submitted,


Martin G. Karopkin
Deputy Commissioner Trials



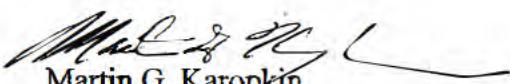
POLICE DEPARTMENT
CITY OF NEW YORK

From: Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER JASON PERI
TAX REGISTRY NO. 935501
DISCIPLINARY CASE NOS. 2010-2645, 2010-2584,
2010-2924 & 2011-4426

In 2008 and 2010, Respondent received an overall rating of 3.0 "Competent" on his annual performance evaluation. He was rated 3.5 "Highly Competent/Competent" in 2009. [REDACTED]

Respondent has been the subject of two prior adjudications. In 2007, he forfeited 34 penalty days for engaging in a domestic dispute, failing to request the response of a patrol supervisor, and failing to remain at the scene of the incident. At that trial, Respondent was also found guilty of failing to properly check the license plate information of vehicles located within the vicinity of his command, and he pled guilty to falsely indicating in a log that the license checks were in fact conducted. In 2009, Respondent was found Not Guilty of a second domestic altercation. Respondent was on Level II Discipline Monitoring from January 2008 to February 2009, at which time he was placed on Level III Special Monitoring.

For your consideration.



Martin G. Karopkin
Deputy Commissioner Trials